

1249 1250

IN THE
**UNITED STATES CIRCUIT COURT
OF APPEALS**
FOR THE NINTH CIRCUIT

In the Matter of PETER THOMP-
SON, Bankrupt.
R. D. SIMPSON, Trustee of the Es-
tate of PETER THOMPSON,
Bankrupt,

Appellant,

—vs.—

L. H. MACOMBER, Receiver of the
PETER THOMPSON COM-
PANY, a Corporation,

Appellee.

No. 3433

Appellant's Brief

W. W. KEYES,
Attorney for Appellant.
805 Tacoma Bldg., Tacoma, Wash.



IN THE
UNITED STATES CIRCUIT COURT
OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of PETER THOMP-
SON, Bankrupt.

R. D. SIMPSON, Trustee of the Es-
tate of PETER THOMPSON,
Bankrupt,

Appellant,

—vs.—

L. H. MACOMBER, Receiver of the
PETER THOMPSON COM-
PANY, a Corporation,

Appellee.

No. 3433

Appellant's Brief

L. H. Macomber as receiver of the Peter Thompson Company, a corporation, is seeking to have allowed a claim of approximately \$8,500.00 against the estate of Peter Thompson, an individual, growing out of an alleged liability on the Peter Thompson stock subscription. The claim has been allowed by the District Judge (pp. 41-43).

The trustee has both appealed and filed a Petition for Revision under section 24-b of the Bankruptcy Act of 1898. Nothing was considered by the District Judge other than questions of law, and we are of the opinion, therefore, that the proper course to pursue in presenting this matter to the appellate court is by a Petition for Revision. As we understand the rule, if there are disputed questions of fact the remedy is by appeal, but if questions of law alone are involved the remedy is by Petition for Revision. If, perchance, this Court should be of the opinion that the proper method of presenting the matter is by an appeal, we respectfully request that the Petition for Revision be dismissed, but that our brief filed in connection with the Petition for Revision be considered as our brief on appeal; if, on the other hand, the Court is of the opinion that our theory is correct, namely, that this matter may be reviewed on a Petition for Revision, we respectfully ask that the appeal be dismissed.

The trustee interposed six Objections to the claim of the said Macomber (pp. 27-32). All of the Objections were, on motion of the receiver's attorney (pp. 33-34), stricken by order of the District Judge.

The Referee's Certificate on Review (pp. 66-71) recites that these creditors now represented by the receiver are the same creditors who filed their claims each individually for the same debt and which were disallowed, and apparently the Honorable Referee was discussing facts brought out in previous hear-

ings before him, and of which he took judicial knowledge. However, none of these facts were considered by the District Judge, as is shown by the record, the latter at all times having viewed the Objections as a matter of law.

It is the purpose of the trustee that the decisions of the District Judge shall be reviewed by this Court, and we again respectfully request that the Court will allow us to be heard either on the Appeal or on the Petition for Revision.

W. W. KEYES,
Attorney for Appellant.

